



**Department of
Defense**

**National Security
Personnel System**



Fundamentals of NSPS

An Overview of the Proposed Regulations



A blurred background image at the top of the slide shows two people walking. On the left, a man in a dark suit and white shirt is walking towards the right. On the right, a woman in a light-colored blazer is walking away from the camera, also towards the right. The background is out of focus, suggesting an office or public space.

Spring 2005

Welcome to the *Fundamentals of NSPS* Proposed Regulations

In February 2005, DoD published proposed regulations for the National Security Personnel System (NSPS) in the Federal Register.

The NSPS statute provides for a minimum 30-day "meet and confer" period during which employee representatives, DoD and OPM officials discuss union concerns and recommendations. These sessions started on April 18, 2005.

DoD and OPM will report the results of the meet and confer process to Congress. Final decisions on the proposed regulations will not be made until the meet and confer process is completed.

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Spring 2005

Welcome to the *Fundamentals of NSPS* Proposed Regulations

To help you understand the proposed regulations, the NSPS PEO has created the *Fundamentals of NSPS*.

Fundamentals of NSPS presents the proposed NSPS regulations in an accessible, easy-to-understand format.

It presents summaries for every NSPS section. It also provides a glossary and acronym list so you can better understand the proposed system.

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Getting Started

The information is categorized by regulation subpart. The subparts are listed as topics on the navigation bar on the left side of each page.

For each subpart, you can review:

- Analysis of the proposed regulation
- Knowledge checks to test your understanding

The analyses pages provide links to the preceding and following sections and to the regulation as published in the Federal Register.

Click a topic to begin!

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General Provisions

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Purpose

(
9901.101

The purpose of these regulations is to establish NSPS as the new human resources management system for DoD. The regulations are based on guiding principles and key performance parameters set by DoD and OPM leadership.

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Eligibility and Coverage

(
9901.102
)

All civilian **employees** are eligible for coverage, except to the extent specifically prohibited by law.

Note: Each subcategory of the regulations contains a “coverage” section that provides specific coverage details.

The **Secretary**, at his discretion, may:

- Bring employees into NSPS at any time (including those under discretionary personnel systems (title 10) under certain conditions).
- Establish an effective date for applying the NSPS Labor Relations System to all eligible employees (including laboratory demonstration projects, non-appropriated fund, and Federal Wage System (FWS) employees).

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Eligibility and Coverage - Continued

(9901.102)

Any new classification, pay or performance management system covering the **Senior Executive Service (SES)** will conform to OPM government-wide policies and procedures. If the Secretary brings SES into NSPS under rules substantially different from government-wide policies, DoD and OPM must issue jointly prescribed regulations setting new rules.

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Scope of Authority

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9901.104
)

The authority for implementing NSPS is 5 U.S.C. 9902 (title 5). The NSPS regulations waive or modify certain chapters of title 5, including:

- Chapter 31, 33, and 35 (Staffing, employment, and workforce shaping)
- Chapter 43 (Performance appraisal systems)
- Chapter 51 (General Schedule job classification)
- Chapter 53 (Pay for General Schedule employees, pay and job grading for Federal Wage System employees, and pay for certain other employees)
- Subchapter V of chapter 55 (Premium pay), except section 5545b (firefighter pay)
- Chapter 75 (Adverse actions)
- Chapter 77 (Appeal of adverse actions and certain other actions)

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Coordination with OPM

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9901.105

DoD will coordinate with OPM prior to establishing or modifying aspects of the NSPS **classification** system, compensation system, appointing authorities, and examining procedures.

When the Secretary proposes an action requiring coordination, the Secretary will allow the **Director** time to comment, consider the Director's comments, and provide notice of implementation of the action before any final determination is made.

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Continuing Collaboration

(
9901.106

DoD will include labor unions in further development and/or adjustment of NSPS, including development of internal implementing issuances.

The unions will have the opportunity to meet and discuss their views with DoD officials. DoD will determine the timelines and terms for the meetings.

Written comments/recommendations from the unions will be part of the record and will be considered before a final decision is made.

This is NOT a bargaining process, and the Secretary reserves the right to determine content of any **implementing issuances**.

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Relationship to Other Provisions

(
9901.107
)

These regulations must be recognized as a means to promote swift, effective day-to-day accomplishment of the DoD mission. DoD and OPM interpretation of these regulations must be accorded great deference.

NSPS employees will be covered under the waived/modified chapters for the purpose of other laws outside those chapters, except as specifically provided in the NSPS regulations or in DoD implementing issuances.

Certain law enforcement officer special rates and geographic adjustments do not apply to employees covered by the NSPS classification and pay system.

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(
9901.107
)

Nothing in NSPS waives or modifies employment discrimination laws under the Equal Employment Opportunity Commission (EEOC).

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Program Evaluation

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9901.108

DoD will establish program evaluation procedures to evaluate NSPS regulations and implementation. Employee representatives will have a role in this evaluation process.

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[Knowledge
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General Provisions - Knowledge Check 1

Click the appropriate answer:

The proposed NSPS regulations completely replace title 5.

- a) True
- b) False

General Provisions - Knowledge Check 2

Click the appropriate answer:

Who is eligible for coverage under NSPS?

- a) Management only
- b) Senior Executives
- c) Employees with 10 years of service or less
- d) All civilian DoD employees

General Provisions - Knowledge Check 3

Click the appropriate answer:

DoD will work with OPM and collaborate with _____ during development of NSPS implementing issuances.

- a) the Government Accountability Office (GAO)
- b) union representatives for civilian DoD employees
- c) the Office of Management and Budget (OMB)
- d) the Department of Homeland Security (DHS)

General Provisions - Knowledge Check 4

Click the appropriate answer:

NSPS affects employment discrimination laws under the EEOC.

- a) True
- b) False





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- Waivers
- Career Groups
- Pay Schedules and Pay Bands
- Classification Requirements
- Reconsideration of Classification Decisions
- Conversion of Positions and Employees to the NSPS Classification System

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Purpose

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9901.201

The classification sections of the regulations provide a framework for DoD to establish a new job **classification** system. Similar to the title 5 system, NSPS will fulfill the merit principle that equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector and appropriate incentives, and recognition should be provided for excellence in performance.

This new method of classification will:

- Use broader pay bands than the General Schedule (GS)
- Allow for market-sensitive pay decisions



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Coverage

(
9901.202
)

The classification regulations make the following categories of **employees** eligible for coverage: General Schedule, Federal Wage System, **SES**, senior and scientific or professional positions (**SL/ST**), and others as determined by the Secretary.



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Waivers

(
9901.203

The NSPS classification system may waive certain title 5 provisions for DoD employees.

The section of title 5 dealing with the classification of **positions** above GS-15 is not waived for the purpose of defining and allocating SES positions or applying provisions of law outside the waivable and modifiable chapters of title 5.



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Career Groups

(
9901.211

NSPS implementing issuances will document and explain the new DoD **career groups**. DoD will base these groups on mission/function, nature of work, qualifications or competencies, career or pay progression patterns, relevant labor-market features, and other characteristics.

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Pay Schedules and Pay Bands

(
9901.212)

Implementing issuances will establish **pay schedules** for career groups. Pay schedules will identify relative levels of work and corresponding pay ranges within a career group. Pay schedules will typically include most or all of the following levels of work:

- Entry/developmental work that involves a combination of formal training and/or on-the-job experience.
- Work that involves nonsupervisory duties and responsibilities at the full performance level of the occupation.
- Nonsupervisory expert work that involves a high level of specialized knowledge or technical expertise.
- A separate pay schedule for:
 - Work that involves the supervision of employees at the full performance or expert level.
 - Managerial work whose primary purpose is to direct key DoD/Component scientific, medical, legal, administrative, or other programs. (**Continued**)

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9901.212

Each pay schedule may include two or more **pay bands**. The pay bands within a pay schedule will represent progressively higher levels of work with correspondingly higher pay ranges.

The graphic on the following page shows an example of how a classification structure may be implemented.

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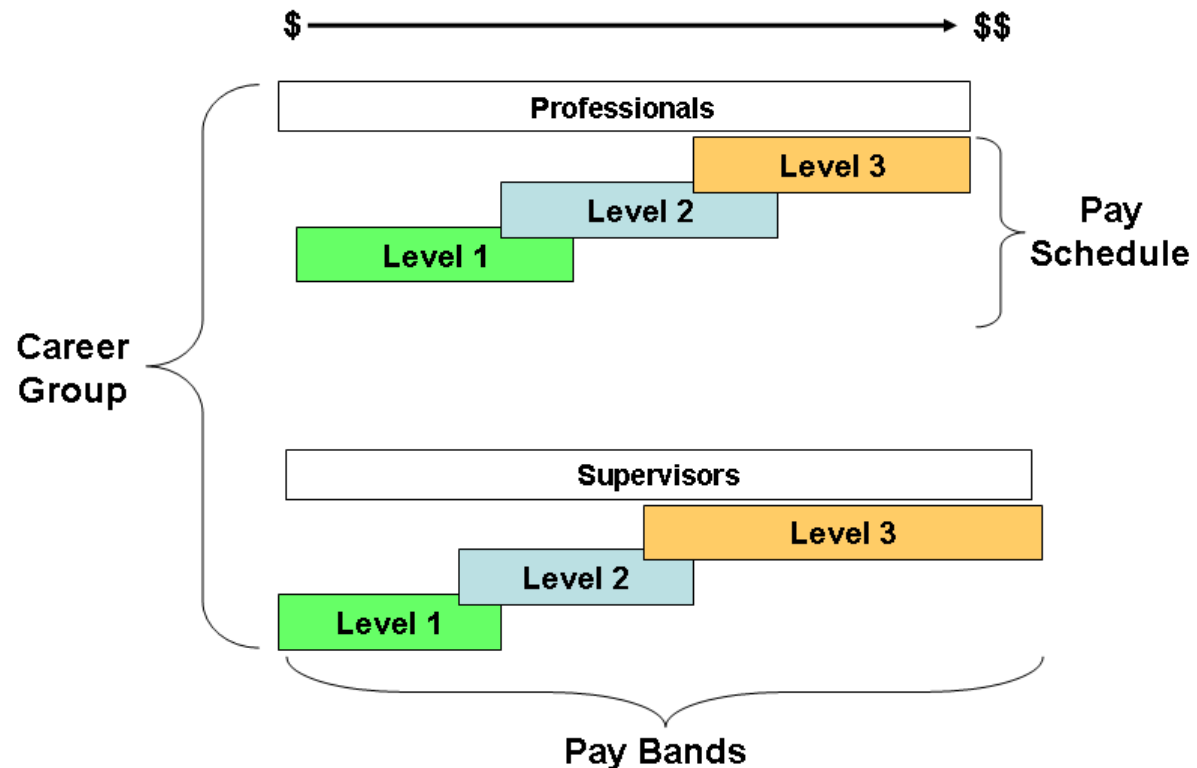
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9901.212
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Classification Requirements

(
9901.221
)

DoD will establish a method for describing and documenting duties, responsibilities, and qualifications requirements of job categories (position descriptions). As part of this method, DoD will generally retain OPM **occupational series** and related criteria for purposes of assigning positions to occupations. DoD will establish internal classification criteria for assigning positions into career groups, pay schedules, and pay bands.



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(
9901.222

Under NSPS, employees may request that DoD reconsider the classification (career group, pay schedule, occupational series, or pay band) of their official positions of record at any time, and may subsequently ask that OPM reconsider a DoD decision, as they can today under the GS system.

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Conversion of Positions and Employees to the NSPS Classification System

9901.231)

The **implementing issuances** will prescribe policies and procedures for converting employees to the NSPS pay banding system. These policies and procedures will guarantee that employees will not experience a reduction in their salary upon conversion.

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Classification - Knowledge Check 1

Click the appropriate answer.

Which of the following is NOT a goal of the NSPS classification system?

- a) To align with the merit principle that equal pay should be provided for work of equal value.
- b) To follow the current title 5 classification structure.
- c) To appropriately consider both national and local rates paid by employers in the private sector.
- d) To provide appropriate rewards and recognition for outstanding performance.

Classification - Knowledge Check 2

Click the appropriate answer.

Which one of the following factors will NOT contribute to the definition of the new DoD career groups?

- a) DoD mission/function
- b) Qualifications/competencies
- c) Tenure
- d) Nature of work

Classification - Knowledge Check 3

Click the appropriate answer.

NSPS will _____ the ability of employees to file a classification appeal (request for reconsideration).

- a)Expand
- b)Reduce
- c)Not impact





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Purpose

(
9901.301
)

The **pay** and pay administration sections of the proposed NSPS regulations establish the framework for the NSPS pay system. They include provisions for setting pay rates for **pay bands**, pay administration, performance pay, and premium pay. This new system links pay to employees' **performance** ratings and is designed to promote a high-performance culture within DoD.



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Coverage

(
9901.302
)

The pay and pay administration sections apply to:

- **Employees** and positions covered by the **GS** pay system
- Federal Wage System employees
- Employees in senior-level and scientific or professional positions (**SL/ST**)
- Members of the **SES**
- Others designated by the **Secretary**

This section does not apply in determining premium pay coverage.



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Waivers

(
9901.303
)

When a specified category of employees is covered under this section, certain provisions under chapters 53 and 55 of title 5 are waived.

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Major Features of the Pay System

(
9901.311
)

Through **implementing issuances**, DoD will establish policies for determining the structure of pay rate ranges for pay bands and for including policies for adjusting rate ranges based on mission requirements, labor market conditions, and other factors.

The issuances will also cover policies for pay setting, pay administration, performance payouts, and premium pay.



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Maximum Rates

(
9901.312

The Secretary will establish maximum rates for basic and aggregate pay.)

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(
9901.313

To the maximum extent practicable for FY 2004 through 2008, the overall amount allocated for compensation for NSPS employees will not be less than would have been allocated had they not been converted to NSPS. These calculations are in the aggregate, not per employee or work unit.

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Structure for Setting and Adjusting Rate

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Ranges

(

9901.321

The Secretary has the authority to set minimum and maximum rates of pay for each **pay band**. The ranges will include consideration of:

- Mission requirements
- Labor market conditions
- Availability of funds
- Pay adjustments authorized for other Federal employees
- Other relevant factors

The established pay band ranges will apply in all locations.

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Setting and Adjusting Rate Ranges

(
9901.322

The Secretary may set the effective date for rate range adjustments.

Rate range adjustments may be different for different pay bands. Adjustments to the minimum rate and maximum rate may be different (e.g., raise the minimum rate by 1% and the maximum by 3%).

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Eligibility for Pay Increase Associated with a Rate Range Adjustment

9901.323)

Employees that are performing at an acceptable level may receive an annual basic pay increase equal to the percentage increase in the minimum rate of their band. Employees with a performance rating of unacceptable will not receive this adjustment.

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Local Market Supplements

**(9901.331 and
9901.332)**

For each pay band, DoD may establish local market supplements (in addition to basic pay) that apply to specified locality areas.

DoD may establish different local market supplements for different **career groups**/occupations/pay bands in the same locality area.

Similar to GS locality pay, local market supplements are considered basic pay for various purposes, such as retirement, life insurance, premium pay, severance pay, and other purposes as authorized in DoD issuances.

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Supplements

(
9901.333
)

The Secretary has the authority to set and adjust local market supplements. Setting and adjusting the supplements will include consideration of:

- Mission requirements
- Labor market conditions
- Availability of funds
- Adjustments received by employees of other Federal agencies
- Other relevant factors

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Eligibility for Pay Increase Associated with a Supplement Adjustment

(9901.334)

Employees performing at an acceptable level will receive local market supplement adjustments.

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Performance-Based Pay - General

(
9901.341

Through NSPS, DoD will gain the flexibility to allocate available funds to employees based on individual, team, or organizational performance. The goal is to foster a high-performance culture that supports mission accomplishment.

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Performance Payouts

(
9901.342
)

NSPS will establish a performance-based system to distribute pay raises and bonuses based on individual performance, **contribution**, organizational performance, or a combination of those elements.

An employee's most recent **rating of record** will be used as the basis for his/her performance pay increase. Implementing issuances will also include procedures on how to challenge ratings (see 9901.409).

NSPS will use a pay pool concept to determine **performance payouts**, which will be in the form of **performance shares** (units of **pay pool** funds), expressed as salary increases, **bonuses**, or both.

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Performance Payouts - Continued

(
9901.342
)

This table illustrates how share ranges could be associated with a five-level rating system. In this chart, Level 5 represents the highest level of performance.

Note: This is one example of what could be implemented.

(Continued)

Rating Level	Share Range
5	6 - 8
4	3 - 6
3	1 - 2
2	0
1	0



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Performance Payouts - Continued

**(9901.34
2)**

The performance payout is a function of the amount of money in the performance pay pool and the number of shares assigned within the pay pool. An individual employee's payout will consider the number of shares assigned and the current salary of the employee. Policies and procedures regarding pay pools and funding will be set through internal issuances. The Secretary may determine a percentage of pay to be included in pay pool funds (to be paid out in salary increases and/or bonuses).

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Performance Payouts - Continued

(
9901.342
)

Increases to basic pay may not cause the basic pay of an employee to exceed the maximum of his or her pay band. In such situations, the amount of the payout that exceeds the maximum of the pay band will be paid as a bonus.

Example: If the maximum of a pay band is \$30,000, and an employee earning \$28,750 is awarded a payout of \$3,000, then the employee may receive an increase in basic pay of not more than \$1,250 ($\$28,750 + \$1,250 = \$30,000$) with the remainder (at least \$1,750) paid as a bonus.

DoD will set procedures for specially-situated employees, including new hires, employees in leave without pay status, those returning from military duty, those returning to duty from workers compensation status, and employees in developmental positions.

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Pay Reduction for Unacceptable Performance/Conduct



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Pay Reduction Based on Unacceptable Performance and/or Conduct

(

9901.343)

A reduction of salary is possible if an employee receives a performance rating of “unacceptable”. However, reductions in pay may not exceed 10% of an employee’s basic salary unless a larger reduction is necessary to set the pay at the maximum rate of a lower band.



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Other Performance Payments

(
9901.344

Other discretionary performance payments include payments to recognize organizational or team performance, extraordinary individual performance, or other special circumstances. The amount of such payments may not cause the employee's basic pay to exceed the maximum rate of the employee's assigned pay band.

(Continued)

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[Other Performance Payments - Continued](#)

(
9901.344
)

Extraordinary Pay Increase – An **extraordinary pay increase (EPI)** is a payment used to reward employees when the payout formula does not adequately compensate them for their extraordinary performance. It is to be used sparingly and only to reward exceptionally high-performing employees whose performance and contributions to the organization are of an exceedingly high value. The performance must be expected to continue at an extraordinarily high level in the future.

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Other Performance Payments - Continued

(9901.344)

Organizational Achievement Recognition - This type of recognition may take the form of additional compensation paid to employees of a team, unit, branch, or organization whose performance and contributions have successfully and directly advanced organizational goal(s).





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Treatment of Developmental Positions

(
9901.345
)

The implementing issuances will provide guidance on pay increases for developmental positions.

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Setting an Employee's Starting Pay

(
9901.351

Under NSPS, pay for initial appointment may be set anywhere in the rate range for the assigned pay band, subject to DoD implementing issuances.

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Setting Pay Upon Reassignment

(
9901.352
)

Pay for voluntary or involuntary **reassignments** may be set anywhere in the rate range for the assigned pay band, subject to DoD implementing issuances. Also, depending on the **adverse action** procedures in these regulations and implementing issuances, an employee could be subject to a salary reduction of up to 10%.



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Setting Pay Upon Promotion

(
9901.353

Subject to DoD implementing issuances, DoD may set pay anywhere within the assigned pay band when an employee is **promoted** to a position in a higher pay band.

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Setting Pay Upon Reduction in Band

(
9901.354
)

Subject to implementing issuances, DoD may set pay anywhere within the assigned pay band when an employee is **reduced in band**, either voluntarily or involuntarily. Pay retention rules will apply, when applicable.

For involuntary reductions through adverse actions, reductions in pay may not exceed 10% of an employee's basic salary unless it is necessary to set the pay at the maximum rate of a lower band. This does not prevent management from taking other actions (including separation) as a result of unacceptable performance.





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Pay Retention

(
9901.355
)

NSPS will authorize pay retention (protecting an employee's former rate of pay that is above his/her current pay band), when an employee's pay would otherwise be reduced through no fault of his/her own and would be subject to rules set in internal DoD issuances.

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Miscellaneous Pay Administration

(

9901.356

Except for employees with an “unacceptable” rating, employee salaries cannot be less than the minimum rate of the assigned pay band. Except for instances of pay retention, employee salaries cannot exceed the maximum rate of the assigned pay band.

DoD will follow applicable pay period and pay rate computation rules in chapter 55 of title 5.

Subject to implementing issuances, DoD may set the basic pay rate for employees with expiring temporary reassignments. Any resulting reduction in pay is not considered an adverse action.



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Premium Pay - General

(
9901.361

These regulations enable DoD to establish rules that change premium pay (e.g., overtime rates; compensatory time off; Sunday, holiday, standby, irregular, and hazardous duty pay). The changes will be detailed in implementing issuances.

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Conversion Principles - General

(
9901.371

Implementing issuances will prescribe policies and procedures for converting employees to NSPS.



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Creating Initial Pay Ranges

(
9901.372

DoD will set the initial band rate ranges for the NSPS pay system. The rate ranges will link directly to converted employees' pay in their previous system. The ranges will also account for locality payments by incorporating the local market supplement.

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Conversion of Employees to the NSPS Pay System (9901.373)

No reduction in an employee's basic pay rate (including locality pay) will occur as a result of NSPS conversion. Employees receiving special rates under current law will be converted to an equal rate of pay consisting of basic pay and a local market supplement. This will not be considered an adverse action (based on a reduction in basic pay, as the rate of pay will not change).

Temporarily promoted employees before the conversion will return to their official position prior to the change. Temporary promotions made after the conversion are subject to the new NSPS system.

The Secretary may make one-time pay adjustments for GS employees and others upon their conversion. The implementing issuances will describe the aspects of this one-time increase.

Pay and Pay Administration - Knowledge Check 1

Click the appropriate answer.

If a maximum of a rate range is increased, then the minimum of the rate range must increase the same amount.

- a) True
- b) False

Pay and Pay Administration - Knowledge Check 2

Click the appropriate answer.

Employees who are performing at an unacceptable level will not be eligible for local market supplement adjustments.

- a) True
- b) False

Pay and Pay Administration - Knowledge Check 3

Click the appropriate answer.

NSPS emphasizes that pay raises and bonuses should be awarded to employees based on all of the following criteria except:

- a) Individual performance
- b) Contribution to the DoD mission
- c) Length of service
- d) Organizational performance

Pay and Pay Administration - Knowledge Check 4

Click the appropriate answer.

An employee's pay will not be reduced as a result of the conversion to NSPS.

- a) True
- b) False



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Performance Management

The proposed regulations contain the following sections.
Select one for more information.

- Purpose
- Coverage
- Waivers
- Performance Management System Requirements
- Setting and Communicating Performance Expectations
- Monitoring Performance and Providing Feedback
- Developing Performance and Addressing Poor Performance
- Rating and Rewarding Performance

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Purpose

(
9901.401
)

The NSPS **performance management system** will promote a high **performance** culture in DoD. It will include the following elements:

- Adherence to merit principles
- Fair, credible, and transparent **appraisal** system
- Link between performance management system and DoD's strategic plan
- Means for ensuring employee involvement in development of the system
- Adequate training for **supervisors**, managers, and **employees**
- Process for ongoing performance feedback and dialogue between employees and supervisors throughout the appraisal cycle
- Safeguards to ensure that the system is fair and equitable
- **Pay-for-performance** to better link individual pay to performance

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Coverage

(
9901.402

The NSPS performance management system covers:

- **Employees** and **positions** who would otherwise be covered by chapter 43 of title 5
- Employees and positions who were excluded from chapter 43 by **OPM** prior to the date of coverage of these regulations
- Others designated by the **Secretary**

This part of the NSPS regulations does not apply to employees who have not been, and are not expected to be, employed in an NSPS position for longer than a **minimum period** during a single 12-month period.

It will also include a provision to allow the Secretary to exercise other, non-title 5 authorities to provide coverage under this system.

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Waivers

(
9901.403
)

The provisions under chapter 43 of title 5 are waived for employees covered by the NSPS performance management system.

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Performance Management System Requirements - Continued

9901.405)

Under NSPS, DoD will assess employee behavior that enhances or impairs job accomplishment. The regulations provide for consideration of employee behavior as a performance factor, element, or objective, such as “teamwork/cooperation.” Under this system, managers will be responsible for clearly setting behavioral expectations throughout the performance period. Employees will be responsible for adhering to these behavioral expectations.

(Continued)



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Performance Management System Requirements - Continued

Under this system, managers will be responsible for:

- Clearly communicating performance expectations and holding employees accountable.
- Making meaningful distinctions among employees based on performance and contribution.
- Fostering and rewarding excellent performance.
- Addressing poor performance.
- Ensuring that employees are assigned a rating of record when required by DoD implementing issuances.

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[Setting & Communicating Performance Expectations](#)



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Setting and Communicating Performance

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Expectations (
9901.406

Performance expectations will support and align with the DoD mission and its strategic goals.

Supervisors will communicate expectations clearly to employees prior to holding employees accountable for them.

Employees are always accountable for demonstrating professionalism and standards of appropriate conduct and behavior.

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Setting and Communicating Performance Expectations - Continued

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9901.406)

Performance expectations can take the form of:

- Goals or objectives
- Organizational, occupational, or other work requirements
- A particular work assignment, including expectations regarding the quality, quantity, accuracy, and/or timeliness
- Competencies an employee is expected to demonstrate on the job and/or the contributions an employee is expected to make

As part of this system, supervisors will involve employees in expectation development to the maximum extent practicable. This involvement will help employees understand the goals of the organization and the actions and tasks required to achieve those goals. Final decisions regarding performance expectations are within the sole discretion of the supervisor.

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Monitoring Performance and Providing

Feedback

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9901.407

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In applying the new performance system and implementing issuances, managers will be responsible for:

- Monitoring the performance of employees and their contributions to the organization.
- Providing ongoing (i.e. regular and timely) feedback to employees about their performance with respect to their expectations. One or more interim performance review(s) will occur during each **appraisal period**.

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Developing Performance and Addressing Poor Performance

9901.408)

Implementing issuances will prescribe procedures that supervisors will use to develop performance and to address poor performance.

If a supervisor determines an employee's performance is unacceptable, the supervisor will consider a range of options available to address the performance deficiency (e.g. remedial training, a **reassignment**, an oral warning, or **adverse action**) and take appropriate action to address the deficiency.

Employees may appeal certain adverse actions based on unacceptable performance.



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Rating and Rewarding Performance

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9901.409

The NSPS performance management system, as established in internal DoD issuances, will include a multi-level rating system.

Under NSPS, DoD will use performance ratings to determine performance payouts, reduction in force (RIF) retention standing, and other appropriate actions.

Ratings will be considered final and official when issued to the employee with all appropriate signatures and reviews. Rating officials will communicate the rating and number of shares earned to the employee prior to the payout.

Employees will be able to challenge rating determinations through a reconsideration process (to be specified in DoD implementing issuances).

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Performance Management - Knowledge Check 1

Click the appropriate answer.

Under the new performance management system, which of the following are managers NOT responsible for?

- a) Clearly communicating performance expectations and holding employees accountable.
- b) Making meaningful distinctions among employees based on performance and contribution.
- c) Fostering and rewarding excellent performance.
- d) Creating their own method of rating.

Performance Management - Knowledge Check 2

Select the feature that does NOT apply to the NSPS performance management system.

- a) Employees will undergo periodic appraisals (normally annually).
- b) Employees will not have a role in defining their own performance expectations.
- c) Managers will be held accountable for managing performance.
- d) Managers will communicate performance expectations, monitor performance, provide feedback and fairly rate and reward employees based on performance.

Performance Management - Knowledge Check 3

Click the appropriate answer.

In the new system, managers and supervisors will be expected to provide feedback and open dialogue through periodic formal and informal appraisals.

- a) True
- b) False



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Staffing and Employment

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Purpose

(
9901.501

In order to meet its critical mission requirements in a dynamic national security environment, the Department needs greater flexibility to attract, recruit, shape, and retain a high quality workforce.

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Purpose - Continued

(
9901.501
)

The staffing and employment sections of the proposed regulations provide the framework for:

- Qualification requirements
- Recruitment for, and appointment to, positions
- Assignment, **reassignment**, detail, transfer, or **promotion** of **employees**, in accordance with merit principles and veterans' preference.

These sections preserve merit principles and veterans' preference, while providing DoD managers with greater flexibility in acquiring, advancing, and shaping a workforce tailored to the Department's needs.

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Scope of Authority

(
9901.502

The staffing and employment sections of the proposed regulations modify and replace certain sections of title 5 for specified categories of employees, applicants, and positions. **Implementing issuances** will provide guidance for carrying out the provisions in these proposed regulations.

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Coverage

(
9901.503

Subject to a determination by the Secretary, the following employees and positions in DoD organizational and functional units are eligible for coverage under the staffing and employment sections of the NSPS regulations:

Employees and positions who would otherwise be covered by 5 U.S.C. chapters 31 and 33 (excluding SES)

Such others, designated by the **Secretary**, as DoD may be authorized to include under 5 U.S.C. 9902.

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Appointing Authorities

(
9901.511

Competitive and Excepted Appointing Authorities—The Secretary and OPM may jointly establish new appointing authorities (e.g., career interns, scholastic achievement). These regulations do not preclude continued use of existing appointing authorities established by OPM.

Additional NSPS Appointing Authorities —The Secretary and the Director may jointly establish new excepted or competitive appointing authorities, which include noncompetitive appointments and excepted appointments that may lead to a subsequent appointment to the competitive service. Such authorities require public notice in the Federal Register with a public comment period prior to their establishment unless DoD determines that a critical mission requirement exists.

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Appointing Authorities - Continued

(
9901.511

Severe Shortage/Critical Need Hiring Authority—DoD may exercise **direct hire authority** when it determines there is a severe shortage of critical candidates or a critical hiring need. Public notice will be provided in accordance with 5 U.S.C 3304(a)(3)(A), and DoD will inform OPM of all determinations made.

Time-Limited Appointing Authorities—The Secretary, in coordination with OPM, may prescribe the duration, advertising requirements, examining procedures, and appropriate uses of **time-limited appointments**.

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Probationary Periods

(
9901.512

The Secretary may establish probationary and/or trial periods and prescribe the conditions for such periods. Preference eligibles who complete one year of their probationary periods will be covered by the adverse actions and the appeals procedures in these regulations.

An employee who fails to complete the in-service probationary period (e.g., a supervisory probationary period) will be returned to a position and rate of pay comparable to the position and rate of pay he or she held before the probationary period.



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Qualification Standards

(
9901.513
)

DoD may, at its discretion, establish qualification standards for NSPS positions (to supplement or replace the OPM qualification standards). DOD may continue to use OPM qualification standards.

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Non-Citizen Hiring

(
9901.514

Procedures for hiring non-citizens into the excepted service (when qualified U.S. citizens are not available) may be prescribed by DoD, in accordance with applicable immigration laws and security requirements.

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Competitive Examining Procedures

(
9901.515

DoD will provide public notice for all vacancies in the career service and accept applications from all sources; however, applicants from the local commuting area and other targeted sources may receive first consideration.

DoD will establish procedures for competitive examining for entry into NSPS positions (examinations to determine the preferred applicant). These procedures will be in accordance with merit system principles and veterans' preference requirements.

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Internal Placement

(
9901.516

DoD will develop methods for assigning, reassigning, detailing, transferring, and promoting employees into or within NSPS, using competitive procedures (with appropriate exceptions) and/or non-competitive procedures, for permanent or time-limited actions.

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Staffing and Employment - Knowledge Check 1

Click the appropriate answer.

The NSPS regulations do not impact which of the following staffing and employment aspects?

- a) Employee recruitment
- b) Employee retention
- c) Veterans' preference
- d) Qualification requirements

Staffing and Employment - Knowledge Check 2

Click the appropriate answer.

OPM appointing authorities will not be retained in the new system.

- a) True
- b) False

Staffing and Employment - Knowledge Check 3

Click the appropriate answer.

The NSPS competitive examining procedures state all of the following except:

- a) DoD will provide public notice for all vacancies.
- b) DoD will accept applications from all sources.
- c) Local applicants will have equal consideration with applicants from far ther away.
- d) DoD may establish new competitive examining procedures under NSPS



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Workforce Shaping

The proposed regulations contain the following sections.
Select one for more information.

- Purpose and Applicability
- Scope of Authority
- Coverage
- Competitive Area
- Competitive Group
- Retention Standing
- Displacement, Release, and Position Offers
- Reduction in Force Notices
- Voluntary Separation
- Reduction in Force Appeals

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Purpose and Applicability

(
9901.601

These sections establish DoD procedures for reducing staff as the result of organizational decisions such as reshaping, realigning, reorganizing, etc.

The proposed regulations retain existing veterans' preference protections in reduction in force (RIF). However, the proposed regulations do provide the **Department** with additional flexibilities to minimize disruption resulting from any reduction in force actions that take place.

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Purpose and Applicability - Continued

(

9901.601

They also determine **employees'** retention standing on)
the basis of statutorily mandated factors (i.e., tenure,
veterans' preference, **performance**, length of service, and
other factors DoD considers necessary and appropriate).

To the maximum extent possible, DoD will only
involuntarily separate or **furlough** employees by RIF when
RIF-avoidance actions do not produce sufficient voluntary
attrition.

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Scope of Authority

(
9901.602

For covered employees, the workforce shaping sections) of the proposed regulations replace and modify the provisions of 5 U.S.C. 3501, 3502 (except with respect to veterans' preference), and 3503.

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Coverage

(
9901.604
)

The workforce shaping sections of the proposed regulations cover employees and **positions** who would otherwise be covered by 5 U.S.C. chapter 35 and others designated by the **Secretary** as authorized for DoD. They do not cover **SES** members and employees excluded from coverage by other statutory authority.

The sections cover the following actions:

- Reduction in force
- Transfer of function
- Furlough

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Competitive Area

(
9901.605

NSPS authorizes a **competitive area** on the basis of one or more of the following considerations that include geographical location(s), line(s) of business, product line(s), organizational unit(s), and funding line(s).

When a competitive area will be in effect for less than 90 **days** prior to the effective date of the RIF, DoD is responsible for any decision to approve the competitive area prior to the RIF effective date.

DoD may establish a competitive area only on the basis of legitimate organizational reasons, not as a pretext for targeting an individual employee for release on the basis of non-merit factors.



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Competitive Group

(
9901.606
)

As part of NSPS, DoD must establish separate **competitive groups** for employees in the excepted vs. the competitive service, under different excepted service appointment authorities, and with different work schedules.

DoD may further define competitive groups on the basis of one or more of other considerations (e.g., **career group**, **pay schedule**, **occupational series** or specialty, **pay band**, and trainee status).



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Retention Standing

(9901.60
7)

DoD's retention lists will be in descending order based on the following criteria:

- Tenure: Career employees (including probationary employees) will be listed first, followed by employees on term appointments, and other employees as identified in DoD implementing issuances.
- Veterans' preference: Employees will be listed in accordance with the preference requirements in §§ 5 CFR 351.504(c) and (d) of OPM's RIF regulations.
- The rating of record: Employees will be ordered from highest rating to lowest rating as defined by DoD regulations and implementing issuances.
- Creditable civilian and uniformed service: Employees will be listed in accordance with § 5 CFR 351.503 of OPM's RIF regulations.

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Retention Standing - Continued

(

9901.607

Names of active armed forces members will not appear on the list.

Employees who receive reduction in force **notices** and their employee representatives will have access to the applicable retention lists.



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[Workforce Shaping Menu](#) **Displacement, Release, and Position Offers**

(
9901.608
)

Employees on a [retention list](#) who are displaced because of position abolishment, or because of displacement resulting from the abolishment of the position of a higher-standing employee on the retention list, may displace a lower-standing employee on the same list if the higher-standing employee is qualified for the position, and no [undue interruption](#) would result from the displacement.

Displaced employees are not provided a [displacement right](#) (i.e., a “bump” right) to a different retention list.

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d
(

9901.608

At its option, DoD may offer an employee released from a retention list a vacant position within the competitive area in lieu of RIF based on the employee's relative retention standing (i.e., the qualified employee with the highest standing is the first employee eligible to receive an offer).

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n Offers, P.1](#)

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Reduction in Force Notices

(
9901.609

DoD will provide a specific written notice to each employee reached for a RIF action at least 60 days before the RIF effective date.

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Voluntary Separation

(
9901.610

DoD may authorize voluntary RIF separations for NSPS employees in a manner similar to present DoD authority under title 5.

For each employee separated by a voluntary RIF action, DoD will retain an employee in a similar position who would otherwise be separated due to RIF.

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Reduction in Force Appeals

(
9901.611

An employee who is separated, reduced in band or furloughed for more than 30 consecutive days by a RIF action by DoD and believes that DoD did not properly apply its retention regulations may appeal to the Merit Systems Protection Board (MSPB).

Workforce Shaping - Knowledge Check 1

Click the appropriate answer.

For reduction in force (RIF) actions, the proposed regulations do not _____:

- a) Retain existing veterans' preference protections in RIFs.
- b) Provide the Department with additional flexibilities to minimize disruption resulting from any RIF actions.
- c) Set up a framework to determine employees' retention standing.
- d) Cover actions involving performance or conduct.

Workforce Shaping - Knowledge Check 2

Click the appropriate answer.

Under NSPS, tenure is the most important factor in retention standing.

- a) True
- b) False

Workforce Shaping - Knowledge Check 3

Click the appropriate answer.

Employees can appeal RIF actions to OPM.

- a) True
- b) False



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Adverse Actions

The proposed regulations contain the following sections.
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- Coverage
- Standard for Action
- Mandatory Removal Offense (MRO)
- Procedures
- Proposal Notice
- Opportunity to Reply
- Decision Notice
- Departmental Record
- Savings Provision

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Purpose

(
9901.701
)

The sections on **adverse actions** in the proposed regulations set down procedures and requirements for **employees** who are removed, suspended, furloughed for 30 **days** or less, reduced in pay, or reduced in **pay band** (or comparable reduction). DoD considers these adverse actions for employees covered under NSPS.

These changes are directed at the cumbersome and restrictive requirements for addressing and resolving **unacceptable performance** and misconduct. The proposed changes streamline the rules and procedures for taking adverse actions, to better support the mission of the **Department** while ensuring that employees receive due process and fair treatment guaranteed by the law authorizing the establishment of NSPS.

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Waivers

(
9901.702
)

The adverse action sections of NSPS waive and replace certain parts of chapters 43 and 75 of title 5.

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Coverage

(
9901.704
)

The adverse action sections cover the following actions against employees:

- Removal
- Suspension
- **Furlough** for 30 days or less
- Reduction in pay
- Reduction of pay band (or comparable reduction)

Additionally, all actions currently excluded from coverage remain excluded.

All DoD employees are eligible for coverage under subpart G, except where specifically excluded by law or regulation. Members of the National Security Labor Relations Board are also excluded from coverage.

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Standard for Action

(
9901.711
)

DoD may take adverse actions only to promote the efficiency of the service. A single system is established for taking adverse actions based on misconduct and/or unacceptable performance.

The proposed regulations eliminate the requirement for a formal, set period for an employee to improve **performance** before management may take an adverse action.

Management selects employees for their **positions** because the employees are well qualified. Under the new **performance management system**, management must explain to employees what level of performance they expect from them.

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Standard for Action - Continued

(
9901.711
)

If an employee fails to perform at an acceptable level, management may use a variety of measures, including training, regular feedback, counseling, and at management's discretion, an improvement period, to address and resolve performance deficiencies.

If an employee is still unable or unwilling to perform as expected, it is reasonable for management to take an action against the employee.



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Mandatory Removal Offense (MRO)

(

9901.712

)

The **Secretary** may identify offenses that have a direct and substantial adverse impact on DoD's national security mission, and warrant mandatory removal. A proposed notice of mandatory removal may be issued only after approval by the Secretary. Only the Secretary can mitigate this mandatory removal penalty.

DoD will publish an MRO listing in order to inform all employees which offenses have been designated as MROs prior to their adoption.

Nothing prohibits the Department from removing employees for offenses other than those identified as MROs.





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Procedures

(
9901.713

Employees are entitled to advance written notice of a proposed adverse action, an opportunity to reply, and a decision notice.)

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Proposal Notice

(
9901.714
)

Management will provide the employee at least 15 days advance notice of proposed action (at least 5 days when there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed).

Management may place the employee in a paid, non-duty status, or other appropriate leave status (e.g., annual leave, sick leave, leave without pay (LWOP), or AWOL if the employee is absent from the worksite without approved leave) if the employee's presence in the workplace poses a threat to the employee or others, results in loss of or damage to Government property, or adversely affects DoD's mission.

Management may also assign the employee other duties during the proposal and reply periods, if the employee is no longer a threat to others, the mission, or Government property.

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Opportunity to Reply

(
9901.715

Employee will have at least 10 days to reply (concurrent with the 15 day notice period), either orally and/or in writing. If there is reason to believe the employee committed a crime that may require imprisonment, DoD will provide that employee at least 5 days (running concurrently with the proposal period) to reply orally and/or in writing. An oral reply does not include the right to a formal hearing with witness examination.

During the opportunity to reply, DoD will provide a reasonable amount of official time to review evidence and furnish affidavits.

DoD will designate an official to receive an employee response.

The employee may be represented by an attorney or other representative of the employee's choice.

DoD may disallow employee representation under certain circumstances.

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Decision Notice

(
9901.716

Management will provide the decision notice on the proposed action in writing to the employee, stating the reasons for the decision and explaining appeal or grievance rights.)

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[Opportunity to
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Departmental Record

(
9901.717
)

The official record will be kept by the Department, and made available to the employee or Merit Systems Protection Board (MSPB), upon request. The record will include the proposal notice, employee's written response, summary of employee's oral response, decision notice, and any supporting material.

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Savings Provision

(
9901.721
)

These rules do not apply to adverse actions proposed prior to the date that the employee becomes covered by these provisions.

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Adverse Actions - Knowledge Check 1

Click the appropriate answer.

All of the following actions are considered adverse actions except:

- a) Suspension
- b) Furlough for 30 days or less
- c) Reduction in force (RIF)
- d) Reduction in pay

Adverse Actions - Knowledge Check 2

Click the appropriate answer.

The NSPS regulations propose that adverse actions only be taken after Management attempts to correct an employee's performance or conduct through other measures.

- a) True
- b) False

Adverse Actions - Knowledge Check 3

The proposed NSPS regulations include all of the following except:

- a) A 15-day proposal notice period for adverse actions
- b) A 10-day period for employees to reply
- c) A formal period where employees can improve their performance before action is taken
- d) A 5-day period for employees to reply when dealing with a crime that may require imprisonment





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Appeals

The proposed regulations contain the following sections.
Select one for more information.

- Purpose
- Applicable Legal Standards and Precedents
- Waivers
- Coverage
- Alternative Dispute Resolution (ADR)
- Appellate Procedures
- Appeals of Mandatory Removal Actions
- Actions Involving Discrimination
- Savings Provision

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Purpose

(9901.801)

The appeals sections of the proposed regulations establish the process by which **employees** may appeal **adverse actions**, and implement the provision in the NSPS law allowing DoD to establish an internal appeals process.

The sections also modify the current process for appealing to **MSPB**, but retain MSPB **administrative judges** as the initial adjudicators of employee appeals to adverse actions.

These regulations are intended to ensure appropriate deference to the adverse actions taken by DoD and to streamline the way MSPB cases are handled while continuing to preserve and safeguard employee due process protections.

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*Fundamentals of NSPS:
An Overview of the Proposed Regulations*

[Home](#) [Appeals Menu](#) **Applicable Legal Standards and Precedents**

(
9901.802

In applying existing legal standards and precedents, MSPB is bound by these regulations to recognize the **Department's** critical mission and the need to promote swift, flexible, and effective day-to-day accomplishment of that mission.



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Waivers

(
9901.803

For applicable employees, the appeals sections of NSPS waive certain provisions in chapter 77 of title 5.

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Coverage

**(9901.80
5)**

Appeals procedures apply to employees who appeal removal, suspension for more than 14 **days** (including **indefinite suspensions**), **furloughs** of 30 days or less, reductions in pay, or reductions in **pay band** (or comparable reduction) resulting from adverse actions.

Employees who are removed during a probationary period are provided appeal rights found in 5 CFR 315.806.

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Coverage - Continued

**(9901.80
5)**

Preference eligible employees who are removed after completing 1 year of a probationary period are provided appeal rights.

The appeals rules in the proposed NSPS regulations do not apply to RIF actions; or actions taken under internal DoD placement programs, including the DoD Priority Placement Program.

Appeals of suspensions of 14 days or less and other less disciplinary actions are not covered, however, they may be grieved through a negotiated grievance procedure or an administrative grievance procedure.



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Alternative Dispute Resolution (ADR)

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9901.806

ADR can be an effective tool in resolving issues without using formal adverse action and appeal procedures. The use of ADR is encouraged (but not mandated).



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Appellate Procedures

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9901.807

- The employee has a right to be represented by an attorney, or other representative.
- Employee appeals will be assigned to an MSPB AJ, who will apply DoD rules in processing and deciding the case. Appeals must be filed within 20 days of the effective date of the action.
- DoD may not grant employees interim relief stay actions against employees, unless the full MSPB so orders after the Department has issued a final decision.
- An AJ cannot require any party to engage in settlement discussions. Any settlement discussions will not be conducted by the presiding AJ (another official will be assigned). Alternatively, the parties may decide to engage in settlement discussions on their own.
- Parties may seek to limit discovery; and will be limited to one set of interrogatories, one set of requests for productions, and one set of requests for admissions. Parties may only compel 2 depositions.

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9901.807

- In cases where material facts are not in dispute, the AJ may limit the scope of a hearing or issue a decision without holding a hearing (summary judgment) upon his or her own initiative, or based on a request by either party.
- The agency action may not be reversed based on the way the charge is labeled or conduct is characterized provided the employee is on notice sufficient to respond to the allegations.
- An agency performance-based action may not be reversed based on the way the performance expectation is expressed, provided the expectations would be clear to a reasonable person.

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9901.807

- The AJ must sustain the action if it is supported by a **preponderance of the evidence**, unless the employee shows (by a preponderance of the evidence) that there was **harmful error** in applying procedures, the decision was based on a prohibited personnel practice, or not in accordance with law.
- An arbitrator, AJs, or the full MSPB may only mitigate or modify penalties if there is a finding that the penalty imposed by DoD was so disproportionate to the basis for the action as to be wholly without justification. When a penalty is mitigated, the maximum justifiable penalty must be applied by the arbitrator, AJ or full MSPB.
- The AJ must issue an initial decision on appeals within 90 days after filing.

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9901.807

- Either party may request a review of the initial AJ decision—a request for review (RFR) sent to both DoD and MSPB concurrently. DoD will have the authority to review RFRs and remand, modify or reverse, or affirm an initial AJ decision. The result of a DoD review will be the final agency decision.
- The initial AJ decision becomes final after 30 days of its issuance, unless either party files an RFR. The initial AJ decision becomes final after 30 days of an RFR filing, unless DoD serves notice that it will act on the RFR and reconsider the initial AJ decision.

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(
9901.807
)

- In cases where DoD lets stand an initial AJ decision, that decision becomes the final, non-precedential DoD decision. Where an RFR was filed, that RFR will become a [petition for review](#) (PFR) to the full MSPB, and MSPB will process the PFR.
- In cases where DoD modifies or reverses an initial AJ decision, the employee may petition the full MSPB for review of that final DoD decision. The full MSPB must act on a PFR within 90 days after receipt of a timely response to the PFR.
- Failure of the MSPB to meet its deadlines will not prejudice the parties and will not form the basis for any legal action by any party.

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9901.807

- The **Director, OPM**, has the right to intervene in a proceeding if he or she believes that an erroneous decision may have government-wide impact. This includes requesting an appeal of a final agency decision to the full MSPB, requesting reconsideration of a full MSPB decision—after consultation with the **Secretary** of DoD—and seeking judicial review.
- The Secretary or an employee may seek judicial review of a full MSPB decision. The Secretary may seek reconsideration of a final MSPB decision, before seeking judicial review.

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(
9901.807

The AJ may require payment of attorney fees if the employee is the prevailing party and such payment is warranted in the interest of justice only when the Department engaged in a prohibited personnel practice or the Department's action was clearly without merit based upon facts known to management when the action was taken.

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[Home](#) [Appeals Menu](#) **Appeals of Mandatory Removal Actions**

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9901.808

)
Appeals of mandatory removal actions will be processed the same as other actions, except that only the Secretary may mitigate the penalty for a sustained offense.

If the MSPB AJ or full MSPB sustains an employee's appeal based on a finding that the employee did not commit an MRO, the Department may propose an adverse action (other than an MRO) based in whole or in part on the same or similar evidence.

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Actions Involving Discrimination

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9901.809

The appeals sections do not change existing law for actions involving discrimination. Employees may still obtain an Equal Employment Opportunity Commission (EEOC) review of their discrimination claims in actions appealable to the MSPB.

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Savings Provision

(
9901.810

These rules do not apply to adverse actions proposed prior to the date of employee's coverage under these provisions.)

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Appeals - Knowledge Check 1

Click the appropriate answer.

The proposed regulations eliminate the Merit Systems Protection Board (MSPB).

- a) True
- b) False

Appeals - Knowledge Check 2

Click the appropriate answer.

Under NSPS, how many days will employees have to appeal an adverse action?

- a) 20 days
- b) 40 days
- c) 10 days
- d) 30 days

Appeals - Knowledge Check 3

Click the appropriate answer.

Only the _____ can mitigate a mandatory removal offense (MRO) penalty.

- a) The MSPB
- b) OPM
- c) Supervisor
- d) Secretary of Defense

Appeals - Knowledge Check 4

Click the appropriate answer.

The proposed NSPS appeals procedures affect existing law for actions involving discrimination.

- a) True
- b) False



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Labor-Management Relations

The proposed regulations contain the following sections.

Select one for more information.

- **Purpose**
- **Scope of Authority**
- **Coverage**
- **Impact on Existing Agreements**
- **Employee Rights**
- **National Security Labor Relations Board**
- **Powers and Duties of the Board**
- **Powers and Duties of the Federal Labor Relations Authority (FLRA)**
- **Management Rights**
- **Exclusive Recognition of Labor Organizations**
- **Determination of Appropriate Units for Labor Organization Representation**
- **National Consultation**
- **Representation Rights and Duties**
- **Allotments to Representation**
- **Unfair Labor Practices**
- **Duty to Bargain and Consult**
- **Multi-unit Bargaining**
- **Collective Bargaining Above the Level of Recognition**
- **Negotiation Impasses**
- **Standards of Conduct for Labor Organizations**
- **Grievance Procedures**
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- **Compilation and Publication of Data**
- **Regulations of the Board**
- **Continuation of Existing Laws, Recognitions, Agreements, and Procedures**
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Purpose

(9901.901
)

NSPS regulations create the framework for a new Labor Management Relations System (labor relations system), which requires an issue-based, collaborative approach to labor relations that recognizes the unique national security mission of the [Department](#).

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Scope of Authority

(9901.902
)

The NSPS regulations modify chapter 71 of title 5.



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Coverage

(9901.904
)

The labor relations sections of the regulations cover all eligible DoD **employees**, subject to a determination by the **Secretary**. DoD employees who would otherwise be eligible for bargaining unit membership under chapter 71 of title 5, as modified by 9901.912, are eligible for bargaining unit membership under these regulations.

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Impact on Existing Agreements

(9901.905)

The provisions of the NSPS labor relations system may impact existing collective bargaining agreements. Provisions of existing agreements that are inconsistent with the NSPS regulations are unenforceable; however, the remainder of the agreement is not affected.

The parties will have a 60-day period after the effective date of coverage to bring into conformance with NSPS the negotiable terms which have been rendered unenforceable. If the parties fail to reach an agreement by that date, they can pursue the matter further under the new negotiation impasse rules.

The Secretary, at his discretion, may continue all or part of a particular provision for a category or categories of employees, and may cancel such continuation at any time.



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Employee Rights

**(9901.906
)**

Employees may bargain collectively over **conditions of employment** as set forth in these regulations, join (or choose not to join) a labor union, and act for a labor union as a representative. There is no significant change from chapter 71 of title 5.

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National Security Labor Relations Board (9901.907)

The new regulations establish a National Security Labor Relations Board (NSLRB or Board) to adjudicate and resolve labor disputes—effectively replacing the current Federal Labor Relations Authority (FLRA) in that role.

There will be at least three members on the NSLRB (but always an odd number), appointed by the Secretary, and removed only under the same conditions as FLRA members. Members will be independent, distinguished citizens known for their integrity, impartiality, and expertise in labor relations and/or the DoD mission, and/or relevant national security matters.

One member is selected from a list of three to five nominees jointly developed by DoD and OPM. (Continued)



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Continued

(9901.907)

The Secretary appoints the Chair of the Board. The vote of the Chair becomes a tiebreaker when there are an even number of Board members created by a vacancy.

A majority vote of the NSLRB is final and binding (subject to FLRA approval).

The Authority will accept the findings of fact and interpretations made by the Board and sustain the Board's decision unless it is shown the Board's decision was--(i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (ii) caused by harmful error in the application of the Board's procedures in arriving at such decision; or (iii) unsupported by substantial evidence.



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Powers and Duties of the Board

**(9901.908
)**

The NSLRB must interpret the NSPS regulations in a way that promotes the swift, flexible and effective, day-to-day accomplishment of the Department's mission as defined by the Secretary.

To the extent provided by these regulations, the NSLRB may perform the following activities:

- Conduct hearings and resolve complaints of unfair labor practices (ULPs).
- Resolve issues relating to the scope of bargaining.
- Resolve disputes concerning certain requests for information.
- Resolve exceptions to arbitration awards.
- Resolve negotiation impasses (in accordance with

these regulations). (Continued)

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Powers and Duties of the Board - Continued **(9901.908)**

- Conduct new review involving all matters within the Board's jurisdiction. (The Board evaluates evidence presented in the record and reaches its own conclusions, but cannot issue status quo ante remedies where the remedies are not intended to cure egregious violations of NSPS regulations or where such an award imposes an economic hardship or interferes with the efficiency or effectiveness of the Department's mission or impacts national security.)
- Resolve disputes regarding the granting of national consultation rights.
- Issue binding, published opinions eligible for appeal through the FLRA to Court.



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Powers and Duties of the Board - Continued **(9901.908)**

While the Department may issue interim rules for the NSLRB, the NSLRB will ultimately prescribe its own rules and publish them in the Federal Register.



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Powers and Duties of the Federal Labor Relations Authority (FLRA)

(9901.909)

FLRA will make appropriate unit determinations, conduct or supervise union elections, and review certain NSLRB decisions.



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Management Rights

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9901.910

The NSPS regulations prohibit management from bargaining over the procedures of core operational management rights, but management must consult (not bargain) over procedures used in the exercise of these rights.

Additionally, management must bargain over the appropriate arrangements stemming from the exercise of these rights, where it is shown a change in conditions of employment is significant and substantial resulting in an adverse impact on bargaining unit employees.

Bargaining will not prevent or delay management from exercising its rights (post implementation bargaining is authorized).

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Management Rights - Continued

(
9901.910

Under 9901.910(a)(1) and (2) of the NSPS regulations,
management has the right to determine the following core
operational matters.

- Mission
- Budget
- Organization
- Number of employees
- Internal security practices
- Hiring
- Contracting out
- Numbers, types, pay schedules, pay bands and grades
- Work assignments
- Technology, methods and means of performing work

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Management Rights - Continued

(
9901.910
)

Under 9901.910(a)(3) of the NSPS regulations, management has the right to make personnel management right decisions concerning the following matters.

- Layoffs
- Adverse actions/discipline
- Selections for appointment

Upon request from the union, management must bargain over procedures used in the exercise of these rights as well as bargain appropriate arrangements. Appropriate arrangement bargaining may be triggered when it is shown a change in conditions of employment is foreseeable, significant and substantial in terms of both impact and duration, and there is a resulting adverse impact on bargaining unit employees.



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*Fundamentals of NSPS:
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[Home](#) > [Labor Management Relations](#) [Menu](#) **Exclusive Recognition of Labor Organizations**

(
9901.911
)

DoD will accord exclusive recognition for a **labor organization** elected by eligible employees (secret ballot, majority of votes cast) in an appropriate unit as determined by the Authority. There is no change from chapter 71 of title 5.



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Determination of Appropriate Units for Labor Organization Representation

(

9901.912)

In determining appropriate units, the FLRA will ensure a clear and identifiable community of interest among the employees, consistent with Department's mission and organizational structure.

These regulations retain chapter 71 exclusions of certain kinds of employees from bargaining units—new exclusions include: employees engaged in clerical personnel work, attorneys, and supervisors of military members.

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National Consultation

(9901.913
)

The Department and Components will conduct national consultation over substantive changes in conditions of employment with those unions holding national consultation rights. National consultation is not required where national level bargaining has occurred or where the continuing collaboration procedures apply. Nothing in the proposed regulations precludes management from seeking the views of other labor organizations not holding national consultation rights, nor does the conduct of national consultation eliminate any local labor relations obligations.

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Representation Rights and Duties

(9901.914)

This section replaces the FLRA flagrant misconduct standard by providing that union representatives are subject to the same expectations regarding conduct as any other employee. It also provides for union representation at formal discussions if management is:

- Announcing or discussing new or substantially changed personnel policies or practices.
- Discussing grievances filed under a negotiated grievance procedure.

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Representation Rights and Duties - Continued **(9901.914)**

The union representation right does not apply to discussions involving:

- Operational matters (where such discussion is incidental)
- A reiteration or application of existing personnel policies, practices, or working conditions

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Representation Rights and Duties - Continued **(9901.914)**

The proposed regulations also preserve the "Weingarten right", which permits union representation at the employee's request when management examines an employee during an investigation and the employee reasonably believes that discipline may follow.

Weingarten rights, however, do not apply to investigations by criminal investigative bodies (e.g., NCIS, CID, OSI) or the Inspector General.

Agreements between management and the **exclusive representative** are subject to approval by the Secretary.



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Allotments to Representation

**(9901.915
)**

Current chapter 71 authorizations and requirements concerning dues allotments are retained in this section.

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Unfair Labor Practices

(9901.916
)

Management's unfair labor practices (ULPs) remain almost identical to those contained in chapter 71. The major difference is the elimination of 7116(a)(7), which provided that it is a ULP to enforce a rule or regulation, which is in conflict with a collective bargaining agreement if the agreement was in effect prior to the issuance of the rule or regulation.

Such action is no longer a ULP because the proposed regulations provide that law, Government-wide rules and regulations, Presidential issuances, and **DoD issuances** will supersede current collective bargaining agreements where the terms conflict. This includes Department issuances in existence prior to the effective date of these regulations.

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Unfair Labor Practices - Continued **(9901.916)**

Under NSPS, the Board will not consider any ULP charge filed more than 90 days after the alleged ULP occurred, unless the Board determines that there is good cause for the late filing.





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Duty to Bargain and Consult

**(9901.917
)**

The new rules establish the duty to bargain in good faith and provide for referral of negotiability disputes and bargaining impasses to the Board for resolution.

They also establish DoD-wide and Component issuances (policies, etc.) as non-negotiable.

Bargaining over an initial or successor agreement is limited to 90 days, unless the parties mutually agree to continue bargaining. Mid-term bargaining is limited to 30 days.





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Multi-unit Bargaining

**(9901.918
)**

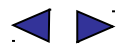
The new labor relations system provides management the ability to negotiate with multiple exclusive representatives at varying geographical or organizational levels, in order to bargain once over the same issue.

Such bargaining is at the discretion of management, and is binding on all parties requested to participate.

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Collective Bargaining Above the Level of

**Recognition
(9901.919)**

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NSPS provides national level bargaining, at the discretion of the Secretary, to negotiate an issue at a level above the level of recognition, and provides that resultant agreements are binding on all subordinate bargaining units of the labor organizations invited to participate.

The regulations exclude National Guard Bureau and Air and Army National Guard from national level bargaining.

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Negotiation Impasses

**(9901.920
)**

The Board has impasse resolution authority. A single, integrated process is required to resolve all matters associated with negotiation disputes (negotiability appeals, ULPs, impasses).

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Standards of Conduct for Labor Organizations (9901.921)

The new labor relations standards of conduct are the same as under chapter 71.

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Grievance Procedures

(9901.922
)

Collective bargaining agreements will include procedures for settlement of grievances, using binding arbitration. The procedures will exclude grievances over performance appraisal ratings of record. They are subject to only an administrative reconsideration process.

Employees may use NGP or appropriate appeal procedure for appealable matters, but not both.

New exclusions under the negotiated grievance procedure:

- A **rating of record** issued under subpart D, which is handled under NSPS regulatory reconsideration or appeal procedure
- **Mandatory removal offense**
- **Classification** or **pay** of any position, regardless of whether it results in a reduction in pay or grade



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Exceptions to Arbitration Awards

(9901.923)

Either party may file an exception to any arbitrator's award, except those awards involving appealable actions under the NSPS regulations, with the NSLRB. Parties file the exceptions involving the appealable actions as a request for review with the Department of Defense and **MSPB**, a petition for review to the MSPB, and then to the Federal Circuit.

Parties may also file exceptions based on the arbitrator's failure to properly consider the Department's national security mission or to comply with applicable NSPS regulations and DoD issuances. In reviewing exceptions, the NSLRB may determine its own jurisdiction without regard to whether any party has raised a jurisdictional issue.





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Official Time

(9901.924
)

In recognition of the foregoing duties of the union, the regulations preserve the official time provisions in chapter 71 of title 5. In so doing, the regulations clarify that, consistent with current law, official time is not permitted for representational duties outside the exclusive representative's bargaining unit, except for multi-unit bargaining and bargaining above the level of recognition and mutual agreement of the agency and the exclusive representatives involved.

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Compilation and Publication of Data (9901.925)

Under these regulations, the Board is required to maintain official records of files, and publish text of rulings.





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Regulations of the Board

**(9901.926
)**

DoD will issue interim rules governing the operation of the Board, with final issuance via the Federal Register, subject to national consultation rights.

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Continuation of Existing Laws, Recognitions, Agreements, and Procedures

(

9901.927)

Nothing precludes renewal or continuation of an exclusive recognition, certification of an exclusive representative, or an agreement that is otherwise consistent with law, these regulations, and DoD issuances entered into before the effective date of the labor relations system.

All Presidential Orders will remain in effect unless specified by these regulations or by DoD **implementing** issuances.



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Savings Provisions

**(9901.928
)**

The new labor relations rules will not apply to grievances or other administrative proceedings already pending when the rules go into effect. Any remedy that applies after the date of coverage will not be enforceable if it conflicts with applicable provisions of the new rules.

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Labor Relations - Knowledge Check 1

Click the appropriate answer.

The NSPS labor relations system _____ existing collective bargaining agreements.

- a) Modifies
- b) Expands
- c) Replaces
- d) Reduces

Labor Relations - Knowledge Check 2

Click the appropriate answer.

NSPS has no impact on the employees' rights to bargain collectively.

- a) True
- b) False

Labor Relations - Knowledge Check 3

Click the appropriate answer.

In the new system, the National Security Labor Relations Board (NSLRB) may perform all of the following activities except:

- a) Conducting hearings and resolving complaints of unfair labor practices (ULPs).
- b) Resolving issues relating to bargaining scope.
- c) Resolving negotiation impasses.
- d) Determining the appropriateness of bargaining units.

Labor Relations - Knowledge Check 4

Click the appropriate answer.

National consultation is not required where national level bargaining has occurred or where the continuing collaboration procedures apply.

- a) True
- b) False

Labor Relations - Knowledge Check 5

Click the appropriate answer.

Which of the following actions are not ULPs?

- a) Publicizing elections
- b) Correcting the record
- c) Informing employees of Government policy
- d) Enforcing a DoD NSPS implementing rule or regulation, which is in conflict with a collective bargaining agreement if the agreement was in effect prior to the issuance of the rule or regulation.
- e) All of the above

Labor Relations - Knowledge Check 6

Click the appropriate answer.

DoD-wide and Component issuances (policies, etc.) are _____.

- a) Non-negotiable
- b) Negotiable





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- Band
- Basic Pay
- Career Group
- Competencies
- Contribution
- Day
- Department or DoD
- Director
- Employee
- Furlough
- General Schedule
- Implementing Issuances
- Mandatory Removal Offense (MRO)
- NSPS
- Occupational Series
- OPM
- Pay Schedule
- Performance
- Promotion
- Rating of Record
- Reassignment
- Reduction in Band
- Secretary
- SES
- SL/ST
- Unacceptable Performance



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- Band
- Basic Pay
- Career Group
- Classification
- Competencies
- Occupational Series
- Pay Band
- Pay Schedule
- Position (or Job)

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- Band
- Band Rate Range
- Basic Pay
- Bonus
- Career Group
- Competencies
- Contribution
- Contribution Assessment
- CONUS or Continental United States
- Extraordinary Pay Increase (EPI)
- Local Market Supplement
- Modal Rating
- Pay Band or Band
- Pay Pool
- Pay Schedule
- Performance
- Performance Payout
- Performance Share
- Performance Share Value
- Promotion
- Rating of Record
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- Reduction in Band
- Unacceptable Performance



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Definitions - Performance Management

- Appraisal
- Appraisal Period
- Competencies
- Contribution
- Minimum Period
- Pay-for-Performance Evaluation System
- Performance
- Performance Expectations
- Performance Management
- Performance Management System
- Rating of Record
- Unacceptable Performance

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- Career Employee
- Promotion
- Reassignment
- Reduction in Band
- Temporary Employee
- Term Employee
- Time-Limited Employee

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- Competing Employee
- Competitive Area
- Competitive Group
- Displacement Right
- Notice
- Rating of Record
- Retention Factors
- Retention List
- Tenure Group
- Undue Interruption





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- Adverse Action
- Furlough
- Indefinite Suspension
- Mandatory Removal Offense (MRO)



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- Administrative Judge, or AJ
- Class Appeal
- Harmful Error
- Mandatory Removal Offense (MRO)
- MSPB
- Petition for Review (PFR)
- Preponderance of the Evidence
- Request for Review (RFR)



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- Authority
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- Collective Bargaining
- Collective Bargaining Agreement
- Component
- Conditions of Employment
- Confidential Employee
- Consult
- DoD Issuance or Issuances
- Dues
- Exclusive Representative
- FMCS
- Grade
- Grievance
- Labor Organization
- Management Official
- Person
- Professional Employee
- Supervisor

Acronym List

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ADR	Alternative Dispute Resolution	MSPB	Merit Systems Protection Board
AJ	Administrative Judge	NCIS	National Criminal Intelligence Service
AWOL	Absent Without Leave	NGP	Negotiated Grievance Procedure
CFR	Code of Federal Regulations	NSLRB	National Security Labor Relations Board
CID	Criminal Investigation Division	NSPS	National Security Personnel System
DHS	Department of Homeland Security	OIPT	Overarching Integrated Product Team
DoD	Department of Defense	OMB	Office of Management and Budget
EEOC	Equal Employment Opportunity Commission	OPM	Office of Personnel Management
FLRA	Federal Labor Regulations Authority	OSI	Office of Special Investigations
FMCS	Federal Mediation and Conciliation Service	PDF	Portable Document Format
FR	Federal Register	PEO	Program Executive Office
FWS	Federal Wage System	PFR	Petition for Review
FY	Fiscal Year	RIF	Reduction in Force
HR	Human Resources	RFR	Request for Review
IG	Inspector General	SES	Senior Executive Service
KPP	Key Performance Parameter	SL/ST	Senior and Scientific or Professional Positions
LWOP	Leave Without Pay	ULP	Unfair Labor Practice
MRO	Mandatory Removal Offense	U.S.C.	United States Code



**Department of
Defense**



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**National Security
Personnel System**

